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Revenge, Punishment, and Justice in Athenian Homicide Law

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This chapter forms part of a larger study of emotions of esteem and self-esteem in classical (fifth- and fourth-century) Athenian society. An element of that project focuses on the role of *timê* (conventionally ‘honour’, but encompassing notions of worth, dignity, prestige, and deference) in Athenian law. This, in turn, requires a consideration of recent controversies regarding the relative importance of personal vengeance *versus* the punishment of offenders in Athenian litigation. The current chapter is an attempt at a test-case of manageable scope, using a limited range of primary sources. The aim is to focus on a limited body of evidence, namely the small corpus of extant Athenian forensic speeches that deal with homicide, to see what, if anything, is distinctive about homicide trials in terms of the role that they assign to notions of honour, vengeance, and state-regulated punishment. An important part of this will concern the relation between the affective and the normative in such contexts.

It is useful to focus on limited corpus of homicide speeches because it is important to respect whatever differences there may be between (a) different categories of offence, (b) prosecution speeches on the one hand and defence speeches on the other, and (c) the various procedures by which homicide could be prosecuted in Athenian law. Even before that, however, it is important to notice *how limited* the evidence is. We have six speeches written for delivery in trials dealing with homicide. Three of these are for delivery in the courts that dealt specifically with such cases. These are: Antiphon 1 (a prosecution speech in a case of alleged *bouleusis phonou hekousiou* (planning of intentional homicide), and thus probably delivered before the Areopagus;¹ Antiphon 6 (a defence speech on a charge of planning involuntary homicide, *bouleusis phonou akousiou*, hence heard by the Palladion); and Lysias 1 (a case in which the defendant alleges that he committed lawful homicide, and brought before the Delphinion). Besides these, there are two speeches in cases in which accused has been subjected to arrest, imprisonment, and trial (*apagogê*). These are Antiphon 5 (for the defence) and Lysias 13 (for the prosecution). The latter appears to be a legitimate use of *apagogê* for homicide, while the former (as the speaker alleges himself) may be a misuse of the procedure for *apagogê* or *endeixis* for *kakourgoi* (‘malefactors’). Apart from these five speeches, we also have Lysias 12, in which Lysias asks a jury to condemn Eratosthenes for the killing of his brother, Polemarchus. This is not a regular homicide prosecution, but a case brought against Eratosthenes in the context of the *euthynai* (scrutiny) that he underwent as a former member of the Thirty (the oligarchic regime that took power in Athens following her defeat in the Peloponnesian War), in order to be covered by the amnesty of 403 which permitted members of the regime to remain in Athens only if they underwent such scrutiny of their conduct. There are two further cases of wounding with intent (*trauma ek pronoias*), which is the Athenian equivalent of attempted homicide (Lysias 3 and 4,

¹ The Areopagus, a court consisting of former archons, heard all cases of *phonos hekousios*. [Arist.] *Ath. Pol.* 57. 3 indicates that another court heard cases of involuntary homicide (*phonos akousios*), adding ‘and also cases of *bouleusis*’. MacDowell (1963: 64-9) takes this to mean that all cases of *bouleusis* were heard at the Palladion, though the more usual view (e.g. of Lipsius and Wilamowitz, cited by MacDowell *loc. cit.*) is that *Ath. Pol.* is referring only to *bouleusis phonou akousiou* (planning of involuntary homicide, i.e. the planning of acts that led unintentionally to the victim’s death, as in Antiphon 6).

both for the defence); these would have been heard by the Areopagus.

Other cases of homicide are of course referred to, in the orators and elsewhere. G. Herman counts 16 attested cases (excluding 'political' murders) for the years 507-322. For Herman, this shows that homicide was rare,² and supports his overall contention that democratic Athens was, by comparison with other pre-modern societies, unusually non-violent. But we need to put these figures in context: there are many offences in Athenian law (attested in ancient sources and much-discussed in modern scholarship) for which there is *no* securely attested case at all;³ and the figure of three speeches for the special homicide courts and six overall for alleged instances of unlawful killing, needs to be set beside the total number of surviving court speeches from the same period. Scholars differ slightly on that total (for various reasons), but all inventories list around 100 cases. A figure of 5% or 6% as a ratio of homicide cases to all attested cases is not particularly low. The figures for homicide as a percentage of all recorded offences in Scotland in 2009/10 are as low as 0.02%. My point is not that we have here the Athenian homicide rate, but that we cannot make these comparisons. The numbers yielded by the surviving evidence for classical Athens, both for all crime and for homicide, are too small to be statistically significant; and yet, for whatever reason, homicide speeches are a significant proportion of our (very limited) surviving corpus of forensic oratory.

A case in one of the special homicide courts would normally (and perhaps could only) be initiated by a member of the victim's family. A case resulting from *apagogê* could be brought by anyone. But no case could be initiated at all if the victim forgave the killer at the point of death.⁴ For MacDowell 'this rule about absolution ... proves beyond question that vengeance required by the killed person was one of the principles on which [Athenian homicide] law was founded'.⁵ In a way, I think this is right, though I will want to qualify it in some respects below. But for the moment, let us not beg the question, and substitute 'redress' for 'vengeance'. The pursuit of the redress that the deceased demanded was a duty of that person's male relatives;⁶ and in fact it seems that all our extant cases, even those which could in theory have been initiated by any citizen who wished to proceed, have been initiated by kin. Whereas for us homicide is perhaps paradigmatically a crime, in which the onus is on the state to find and punish an offender, at Athens it is fundamentally an offence against the victim and his or her family.

This primary orientation is apparent in several other respects. In two ways, the demands of the victim's family for emotional satisfaction are encompassed in the extent and circumstances of the penalty. First, the prosecutor had the right to be present to witness the execution.⁷ An execution, however, would actually take place only in the event that the defendant did not exercise his prerogative to flee after

² Herman (2006) 207. Cf. Lanni (2006) 75, 112.

³ See the list of all attested offences and cases in Todd (1993) 102-9.

⁴ For this (i.e. the possibility of *aphesis*), see D. 37. 59: 'if the victim himself before his death releases the murderer from bloodguiltiness, it is not lawful for any of the remaining kinsmen to prosecute'. Cf. E. *Hipp.* 1442-3, 1448-51 (with MacDowell (1968)).

⁵ MacDowell (1963) 148.

⁶ MacDowell (1963) 8-11.

⁷ See D. 23. 69 (cf. Aeschin. 2. 181-2). Execution (by *apotympanismos*, being fastened to a board) was possibly public: see Todd (2000) 47-8. That executions for homicide were probably rare is the view of Carawan (1998) 149.

delivering his first speech. There is no certainly attested instance; and the event was probably relatively rare. The family's interest in the extent of the penalty is also recognized by the institution of *aidesis*, the process by which the relatives of a victim of unintentional homicide could, if they were so persuaded, allow an exiled killer to return to Attica.⁸ *Aidesis* implies that the victim's family might retain residual or even considerable resentment, not necessarily dispelled by conviction or even by a period of exile, even when a court has established the absence of intention to kill. The provision no doubt derives from a period at which homicide was exclusively a matter for the families concerned to resolve; the term's derivation (from *aideomai*, I respect) indicates the importance accorded the emotional attitudes of the victim's family. *Aidesis* seems to require some sort of approach by the exiled homicide, an act of persuasion or supplication designed to elicit a change in attitude. This may have been purely formal, and it may have involved the payment of compensation, but still the provision demonstrates the orientation of Athenian homicide law towards the victim, the victim's family, and their sense of grievance.⁹

If a relative decided to proceed with a case in one of the special homicide courts (a *dikê phonou*), he would, after making an application to the relevant magistrate (the *basileus*), have to attend three preliminary hearings (*prodikasiai*), a month apart, before the case came to court in the fourth month. We do not know anything about what took place at these hearings, but some speculate that one purpose was to allow a settlement if one could be reached.¹⁰ The speaker of Demosthenes 58. 28-9 presents it as disreputable to accept a financial settlement rather than proceed with a suit for *phonos hekousios*,¹¹ but it does not seem to have been illegal to do so. Settlement before trial is a regular option in a wide range of Athenian legal proceedings. Accordingly, a relative who did proceed to trial after three *prodikasiai* is rejecting any suggestion of a private settlement and insisting on the redress that the victim is felt to demand.¹²

That redress, however, can be obtained only by means of the institutions of the *polis*. The state left much in the hands of individuals and families, and took considerable account of their interests and motives, but the relevant procedures are subject to state regulation from start to finish in ways that extensively limit or exclude forms of redress that probably obtained prior to the development of legislation and to which families might otherwise be tempted.¹³ The state's interest in limiting self-help and

⁸ See Dracon's homicide law, *IG* 1.³ 104. 13-19; cf. D. 21. 43; 23. 72, 77; 37. 58-9; 38. 21-2; *Ath. Pol.* 57. 3. See further Heitsch (1984); cf. MacDowell (1963) 123-5; Gagarin (1981) 48-52, 139-40. For Gagarin, the restriction to cases of *phonos hekousios* did not apply in Dracon's original law; cf. Carawan (1998) 33-83 (esp. 34-6, 81), 151; but contrast Heitsch (1984) 12-18.

⁹ Cf. MacDowell (1963) 123.

¹⁰ See e.g. Carawan (1998) 142.

¹¹ D. 58. 28: 'Not long after he was removed from office, when his brother died by a violent death, Theocrines showed himself so utterly heartless toward him that, when he had made inquiry concerning those who had done the deed, and had learned who they were, he accepted money, and let the matter drop.'

¹² Cf. Carawan (1998) 112, 272.

¹³ For the various aspects of state control, see already Dracon's homicide law, esp. the protection it afforded a killer who chose exile, 26-9. Cf. D. 23. 37-43, 51-2 (the exiled killer is not to be pursued or killed, though he may be killed with impunity or arrested if he breaks exile, 28-35); 44-6, 49 (protection for those exiled for unintentional homicide); 69 (the prosecutor can witness the execution of a relative's killer, but punishment, *kolasis*, is carried out by the city in the name of its laws); 71-3 (only the law has authority over someone convicted for unintentional homicide; the exile is to leave by a

controlling violence, especially cycles of violent retaliation, is clear already in Dracon's homicide law and explicitly commended in Demosthenes' extensive paean to Athenian homicide law in his speech (number 23 in the corpus) against Aristocrates: as we have seen, the prosecutor can witness the execution of a relative's killer, but the action is performed by the city in the name of its laws (D. 23. 69). Someone accused of homicide must keep away from certain parts of the city, but may otherwise go about his business. A defendant on a charge of *phonos hekousios* (and so liable to the death penalty if convicted) may withdraw into exile at any point up to the end of the first defence speech, and may not be hindered or pursued. Anyone exiled for *phonos akousios* must be allowed safe passage out of the country. An exiled killer may be put to death or arrested if he returns to Attica, but he may not be pursued or killed beyond the borders, and if arrested, he may not be subject to torture or extortion. The bottom line may be the victim's desire for redress, enjoined as a duty on his relatives, but the city has a major say in how that redress is pursued. If the importance accorded the grievances of the victim and the family suggests the pursuit of something like vengeance, the role of the state in regulating the whole process shows that this is not just a matter of personal revenge; at the least it is regulated and sanctioned by the state; but there is also a sense in which it reflects the state's legitimate interest in the rule of law and the punishment of offenders. With Demosthenes' claim that the intention behind Dracon's law was 'to prevent an endless succession of *timôriai*', we might compare the pride in Athenian institutions' ability to do just that that is evident in Aeschylus' *Eumenides*.

We shall come back in a moment to what it is that individuals, their families, and the *polis* might be said to want from the legal process: it may be too simple to oppose the family, with its presumed desire for revenge, to the state with its interest in punishment. But first I want to look at two areas in which issues of revenge or retaliation bear on homicide procedures in slightly different ways.

First, one of the issues in the now rather tired dispute between Herman and his opponents (such as D. Cohen) on the prevalence of feuding, enmity, and revenge in Athenian society concerns the pursuit of enmity in cycles of litigation. For Cohen, these represent the pursuit of vendetta by other means – the norms here are norms of masculinity, honour, and emotions such as anger, not of justice or the rule of law.¹⁴ For Herman, such cases are isolated abuses that do not detract either from legal system's general aim of resolving and preventing disputes or from the general picture of Athenian society as peaceful, tolerant, and non-confrontational. The latter position is not really tenable. Prosecutors often admit their personal hostility towards the accused;¹⁵ and this is especially the case in *graphai*, 'public' cases that could be brought by any citizen, where it is important to have a personal motive in order to

specified route and must be allowed safe passage; he may appeal for *aidesis* and return); 80 (regulations specifying limits on the prosecutor's actions and a degree of protection for those prosecuted by *apagogê*). According to Demosthenes, the general principle of Athenian homicide law is 'to prevent an endless succession of *timôriai*' (ἵνα μὴ ... ἀπέραντοι τῶν ἀτυχημάτων αἱ τιμωρίαι γίγνωνται, 23. 39). Cf. (e.g.) Cohen (2005) 227-8.

¹⁴ See Cohen (1995), *passim*.

¹⁵ See e.g. Aeschin. 1. 2 ('very often private enmities correct public abuses'); [D.] 53. 2 ('I thought it the most outrageous thing ever seen among men, that I should myself suffer the wrong, but that another should lend his name on behalf of me, the one wronged; and that this would then serve as presumptive proof to my adversaries that I am lying whenever I speak to you of our enmity'); further examples in Dover (1974) 182; Cohen (1995) 61-86; Rhodes (1998).

forestall charges of vexatious litigation, or ‘sycophancy’. There are, moreover, many speeches that demonstrate that the litigants in the particular case are engaged in a protracted, personally or politically motivated cycle of suit and counter-suit. A good example is Lysias 10 (*Against Theomnestus* 1), where there have been at least four previous suits involving speaker, his adversary, and their allies;¹⁶ as S. Todd puts it ‘a lot of what occurs in the orators is not so much dispute settlement as dispute perpetuation’.¹⁷ It is significant (of course) that this retaliation is pursued by legal and peaceful means, but the instances in which a particular suit is clearly just one stage in an ongoing dispute are too numerous to be regarded as isolated abuses of the system and must reflect a wider culture of retaliation in Athenian society.

On occasion, however, it might be in the interests of defendants to suggest that their opponents are engaged in the pursuit of a wider, personally or politically motivated agenda. This is not just an argument that the pursuit of enmity through the courts is an abuse of the system; it is also – and more importantly – a tactic to undermine the prosecution’s case in the trial in question, especially in a homicide case, given the Athenians’ sense that homicide trials required a higher level of seriousness, relevance, and focus on the facts of the case, than did other kinds of suit.¹⁸ This is the aim of the *chorêgos*, the defendant in Antiphon 6, who claims that the relatives of the chorister whose death he is accused of causing were suborned to prosecute him by his political enemies, whom he had previously charged with misconduct in public office.¹⁹ We see something similar in Isocrates 18 and Demosthenes (in fact Apollodorus) 59,²⁰ neither of which is a homicide case, but both of which refer to trials in which the speaker’s opponent has brought false charges of homicide as a tactic in an ongoing dispute: in Isocrates 18 the falsity of the charge is irrefutably demonstrated by the accused’s ability to produce the alleged victim before the court. It could not have been unthinkable for individuals opportunistically to subvert the processes of the homicide courts in this way, though given the respect in which these courts were held, it is clearly part of the speaker’s purpose to present his opponents’ motives as negatively as he can. Homicide trials are clearly enmeshed in the general rough and tumble of Athenian life, and part of that was the use of the lawcourts as a vehicle for personal and political feuds. But the fact that a homicide trial, like any other sort of case, may be used in pursuit of purely personal vengeance does not in any way prove that the intrinsic purpose of a homicide trial was nothing more than personal vengeance.

The second issue is the extent to which Athenian law legitimized killing in retaliation. There were some forms of killing that were specified as lawful: these would either not lead to a trial at all, if the relatives of the victim agreed that there was no case to answer; or, if the relatives rejected the killer’s justification, the defendant might be acquitted without penalty if he successfully argued (at the Delphinion) that one of these scenarios applied in his case.²¹ One of these circumstances is the one that

¹⁶ On Lysias 10, see Todd (1993) 258-9; cf. e.g. the ongoing feud between Demosthenes and Meidias, MacDowell (1990) 1-13; Cohen (1995) 87-118.

¹⁷ Todd (1993) 153.

¹⁸ See MacDowell (1963) 42-4, 100; Lanni (2006) 75-114.

¹⁹ See Antiphon 6. 34-6, 39-40.

²⁰ See Isoc. 18. 52-4 (in context of a property dispute, Callimachus charges Cratinus with killing a slave woman; Cratinus produces the ‘deceased’, alive and kicking, at his trial); [D.] (i.e. Apollodorus) 59. 9-10 (Stephanus has allegedly been bribed by Apollodorus’ enemies to accuse him of involuntary homicide of slave woman).

²¹ See D. 23. 53.

obtains in Lysias 1, killing of a seducer caught *in flagrante*.²² The same law that specifies the legality of this action also specifies one form of killing in self-defence, killing of a highway robber (Demosthenes 23. 53). Later in the same speech Demosthenes quotes Draco's law for the right to kill someone attempting to seize oneself (and/or one's property) illegally and by force.²³ This provision is attested also in the inscribed text of the law itself; and the immediately preceding lines of the inscription have two tantalizing references to 'beginning unjust hands', a phrase used in the context of a plea of justified retaliation at Antiphon 4. 2. 1 (cf. 4. 3. 2-4). There is disagreement about whether all forms of killing in self-defence could be argued to fall under the same category. Gagarin (1978) argues for a distinction between lawful killing and killing in what he calls 'simple self-defence'. This seems to be borne out by (a) Antiphon's third *Tetralogy* and (b) a passage in Demosthenes 21 (*Against Meidias*), where the issue appears to be not affirmation *versus* denial of self-defence, but whether self-defence, even if established, should acquit.

Leaving aside the complications raised by Antiphon's *Tetralogies* (artificial rhetorical exercises, heavily reliant on arguments from probability), let us look at the case mentioned in Demosthenes 21. In sections 70-6 of the speech, Demosthenes contrasts his own forbearance when punched in the face in public with the violent reactions of two other men, one of whom is Euaeon, who killed a man called Boeotus in retaliation for a single blow. For Herman the point of this passage is simple: Demosthenes wants to elicit the jurors' admiration for his refusal to retaliate violently and their support for his principled stance in seeking legal redress; the case of Euaeon and Boeotus is there to provide a negative example.²⁴ But Demosthenes' argument is designed to pre-empt the conclusion that the offence for which he is seeking redress must be an insignificant one – otherwise, he'd have hit back (70). Euaeon's lethal retaliation against Boeotus is then introduced in order to illustrate how unbearable an insult can be (71-2). Demosthenes then (73) urges his audience to reflect that, if Euaeon's anger was understandable, his against Meidias is more so. He was fortunate and sensible enough to be able to restrain himself in the face of this extreme provocation, and though he represents his own response as the correct one, he also understands Euaeon's – and so did many of the jurors at Euaeon's trial, given that he was condemned by only one vote (74-5). Demosthenes wants to present Meidias' offence as worse than that of Boeotus and his own prudence and self-control as better and more admirable than Euaeon's violent retaliation. But he and Euaeon share the same desire for satisfaction, for restitution of *timê* – for *timôria* (75-6). Demosthenes wants to persuade the jurors that his anger is as great as or greater than Euaeon's, to arouse their anger at Meidias, and to persuade them that his failure to retaliate at the time is not a sign of any lack of gravity either in the offence or in his reaction to it. Demosthenes has it both ways: he wants to advertise his own forbearance, but also to appropriate the sense of outrage that drove Euaeon to kill. He possesses the manly desire to retaliate that was endorsed by the minority of dikasts who voted to acquit; but has also demonstrated his strength in overcoming a powerful opponent – not Meidias, but his own anger. The distribution of the votes for the condemnation or acquittal of Euaeon and Demosthenes' argument in general indicate not that Athenian

²² See Lys. 1. 30-1, with the law quoted at D. 23. 53 ('in intercourse with his wife, or mother, or sister, or daughter, or concubine kept for procreation of legitimate children'); also *Ath. Pol.* 57. 3; Aeschin. 1. 91; Plu. *Sol.* 23. 1.

²³ D. 23. 60; cf. the law itself, *IG* 1.³ 104. 37-8.

²⁴ See Herman (2006) 168-73, 403.

attitudes to revenge are simple, but that they are complex. The fact that Euaeon was actually condemned, and his plea of self-defence did not persuade even some who accepted it to vote for acquittal, suggests that Gagarin is right that such cases do not fall into the same legal category as the various forms of lawful killing.

Someone who ‘began unjust hands’ would be liable for prosecution in Athenian law, for the offence of *aikēia* (assault; thus such a person would be a lawbreaker); but the law seems not to authorize lethal retaliation in this case. It does, however, authorize lethal retaliation when a man catches another ‘in intercourse with his wife, or mother, or sister, or daughter, or concubine kept for the procreation of legitimate children’ (Demosthenes 23. 53). This is the law that Euphiletus appeals to in his defence against the charge that he unlawfully killed the seducer, Eratosthenes, in Lysias 1 (see esp. 1. 30-1). The facts of the case may not be as the speaker represents them; and even if they are, there is clear exaggeration in his insistence that the law commands, rather than permits him to kill a seducer (26, 27, 29, 34, 50). But he clearly has a *prima facie* case, and so, although his accusers charge him with *phonos hekousios* (27, 37-42, 47, 50), he is entitled to be tried not at the Areopagus (30), but at the Delphinion.

The option chosen by Euphiletus was not for everyone: the speaker of Isaeus 8. 44 describes his opponent as a serial seducer, undeterred by his experience when he ‘underwent what it is right for those who do such things to undergo’ – whatever ὅ τι προσήκει is here, it is not death. Other passages refer to various indignities short of death.²⁵ There is also a rule that someone who lost a suit for false imprisonment as a seducer (*moichos*) would be handed over for his opponent to do as he wished with him, short of using a knife.²⁶ It is possible, perhaps even likely, that the killing of the seducer was unusual at the time of Lysias’ speech, perhaps even something that a defendant would have to work hard to present as justified. But however that may be, the provision to kill or humiliate a *moichos* betrays the same general intention as does, for example, the law against *hybris* (deliberate humiliation) – that the honour of citizens should be protected and that citizens who believe that their *timē* has been illegitimately violated have the support of the state in seeking redress. These provisions show not just that *timē* was something that a citizen could be seen as having a *right* to, but that the community set great store by the protection of such rights. It is not unconnected to this that *timē* is the ordinary Greek for the rights and privileges that citizens enjoyed, its opposite, *atimia*, the legal term for the forfeiture of (all or some of) such rights and privileges. The *timē* of the victim is also a central focus of homicide law: we see this in the law’s general orientation towards the victim, the victim’s family, and their demand for *timōria*, restitution of *timē*, and in the particular provision that there is no right to pursue *timōria* if the victim him- or herself remits the killer. We see it, incidentally, also in the provision that the intentional killing of a metic or slave be tried in the same court and accorded the same level of redress as the unintentional killing of a citizen:²⁷ this is clearly a matter of the relative *value* of the different categories of victim; their difference in legal status – i.e. *timē* – is reflected in a difference in sanction – i.e. *timōria*.

²⁵ See Lys. 1. 49; Ar. *Nub.* 1083; *Plut.* 168; Xen. *Mem.* 2. 1. 5.

²⁶ See [D.] 59. 66.

²⁷ *Ath. Pol.* 57. 3.

This brings us to the central question: how should we describe the *timôria* that the state, under the terms of its laws concerning homicide, permits the victim's relatives to pursue – is it vengeance, is it punishment, is it both, or is it neither?

There are various modern distinctions between vengeance and punishment that have been used to map Athenian terms and practices onto either of the two poles of the antithesis.²⁸ But both the modern definitions and their application to Athenian terms and practices can be problematic.²⁹ The discussion of why this is so risks being lengthy and rather arid; but a particular problem, it seems to me, is that many attempts to define *timôria* in Athenian law in terms of some modern distinction between vengeance and punishment assume from the outset that *timôria* must be one or other of these.³⁰ For the purposes of this chapter I want to start from a more basic idea, which I think is less controversial. I refer to the notion that, both conceptually and legally, punishment, however conceived, is primarily an experience of the offender, imposed on that person because they are believed to have committed – or, in a legal

²⁸ For typical modern formulations, see Mackenzie (1981) 5-17; Saunders (1991) 21-2 (with 21-32 in general on the application of such criteria in Adkins (1960) and Mackenzie (1980)); Allen (2000) 18-19 (with 15-38 in general). For Mackenzie (1981: 10-12) 'revenge is characterized as a transaction taking place between individuals' (p. 11 n. 27), whereas punishment must be institutionalized, carried out in the name of an (impersonal and impartial) authority, and imposed on the offender as a penalty (rather than as the 'price' payable for the advantage of offending); victims have no authority to punish.

²⁹ See Allen (2000) 21: 'Our intuitive distinction between "revenge" and "punishment" [that "punishment is legitimate, but revenge is not", p. 18] breaks down in the face of the [Athenian] record.' Cf. *ibid.* n. 23: 'The definitions of "revenge" and "punishment" do not even capture contemporary penal practices' (or, one might add, contemporary English usage either, in which many forms of simple interpersonal retaliation can be described as 'punishment', and (for example) a busy schedule at work can, in the absence of an offence, an offender, and a punitive authority, be described as 'punishing').

³⁰ Thus Allen (see previous note) recognizes the inadequacy of the distinction between revenge and punishment, but then proceeds to use 'punishment' as the default category. The danger of equivocation that this entails is apparent when, in her discussion of Pindar's fifth *Nemean* (2000: 100-1), she applies the term 'punishment' both to the retaliation of Acastus' wife when Peleus spurns her sexual advances and to Acastus' attempt to kill Peleus as a result of his wife's false accusation of rape. Allen has insisted that Greek *timôria* resembles 'punishment' when it is used to enforce widely accepted social norms; but though it is a perfectly legitimate colloquial use of the English terminology to say that the wife of Acastus 'wishes to punish' Peleus (Allen (2000) 100), it is not a widely accepted social norm that a wife whose attempt to persuade a virtuous young man to have sex with her has failed is entitled to retaliate by plotting his death. There is an important distinction to be made here, and a role for the category of 'revenge' that is not being given its due. Cf. her p. 135: 'Modern worries about vendetta are based on ... anxiety about the valorization of anger. For that matter, we moderns generally expect that vendettas will arise when anger is made the basis for responses to wrongdoing. Where anger is a legitimate ground for punishing, one act of punishment will constantly lead to another since those who are punished will become angry at the loss of honor entailed in their own punishment and with then try to punish in turn.' But if one act of punishment constantly leads to another it is moot whether we are talking about punishment at all – if one believes that one has been *punished*, then there is nothing for one 'to punish in turn'. At the very least, Allen's use of the relevant terms here is non-standard. For different reasons (i.e. because the *timôria* that Athenian litigants seek is pursued 'in conformity with the laws of their state and through the medium of ... the proper agents of that state's power and authority'), Herman too (2006: 190-1) insists that such *timôria* 'has very little to do with "primitive" vengeance and a great deal to do with what we would call punishment'. A substantial section of Herman's book is devoted to the alleged failure of scholars who engage in conceptual analysis of Greek social and ethical terminology to avoid the pitfall of 'the fusion of moral norms' (p. 158), i.e. imposing modern categories on ancient realities. Herman makes no attempt to analyse the concept of *timôria* by investigating its usage; yet there is a clear 'fusion of moral norms' in his insistence that in legal contexts *timôria* is not revenge, but punishment (and repeated inconsistency with the several passages in which he himself uses 'revenge' words to translate *timôria* words, e.g. pp. 191, 397).

context, because they have been convicted of – an offence. If we accept that, we can begin to look more closely at *timôria* in Athenian law.

Greek has perfectly ordinary words, *zêmia*, *kolasis*, and their cognates, that denote the imposition of harm or loss upon an offender, and these occur with some frequency in forensic oratory, including homicide speeches. Over our six homicide speeches as a whole, however, *zêmia/kolasis*-words are much less frequent than *timôria*-words: the ratio is 20:56, i.e. *timôria*-words are almost three times as common. Table 1 gives the occurrences of relevant terms by speech, by purpose (defence or prosecution), and by procedure (*dikê* versus ‘public’ procedures).³¹

defence					prosecution			
	Ant. 5	Ant. 6	Lys. 1	total	Ant. 1	Lys. 12	Lys. 13	total
<i>Timôria</i>	6	6	6	18	7	6	25	38
<i>Orgê</i>	5	0	2	7	0	7	0	7
<i>Kolasis</i>	2	0	0	2	0	2	0	2
<i>Zêmia</i>	1	2	7	10	0	2	4	6
Totals	14	8	15	37	7	17	29	53

‘private’ (<i>dikê</i>)					‘public’ (<i>apagogê</i> , <i>euthynai</i>)			
	Ant. 1	Ant. 6	Lys. 1	total	Ant. 5	Lys. 12	Lys. 13	total
<i>Timôria</i>	7	6	6	19	6	6	25	37
<i>Orgê</i>	0	0	2	2	5	7	0	12
<i>Kolasis</i>	0	0	0	0	2	2	0	4
<i>Zêmia</i>	0	2	7	9	1	2	4	7
Totals	7	8	15	30	14	17	29	60

Table 1

The ratio of *zêmia/kolasis*-words to *timôria*-words is slightly skewed by two speeches of Lysias, 1 and 13. Lysias 1 is a defence speech, but the argument is that that the defendant was in fact implementing a form of punishment demanded by the law, and the speaker’s tactic is to represent his victim, not himself as the offender. This is probably why this is the only homicide speech in which there are more instances of *zêmia* than of *timôria* (though *timôria* is also important). By contrast, Lysias 13 is a prosecution by the ‘public’ procedure of *apagogê*, in which it is an important part of the prosecutor’s strategy to arouse the *dikasts*’ indignation over the crimes of the Thirty Tyrants in general. This is one basic reason why the speaker returns repeatedly to the notion of *timôria*. But otherwise, given the comparatively small corpus and the limited occurrence of the relevant terms, there does not seem to be much that is statistically significant about the distribution, either in terms of defence *versus* prosecution speeches or in terms of *dikê* *versus* other procedures. One thing that does not appear in the Table, however, should be noted: the representation of the *polis* (as well as the victim) as a victim of the offence or of offender’s *injustice* (*adikia*) occurs

³¹ The reason for the inclusion of ‘anger’ terms (*orgê* etc.) will become apparent below.

only twice in *dikai* (in Antiphon 1. 3 and 24), but is much more common in the ‘public’ case, Lysias 13. We shall say more on these subjects below.

Like *zemia*, *kolasis*, and ‘punishment’, *timôria* can be presented as an experience of the offender, one that he undergoes *because of* his offence.³² But much more regularly and characteristically, *timôria* is something that is performed *for* the victim (expressed using the dative of interest) or *on behalf of* the victim (using the preposition *hyper* + genitive).³³ Indeed, the *timôria* that is achieved by a successful prosecution is said to be the victim’s *timôria*.³⁴ It is something done *to* the offender, but also something extracted *from* the offender and given *to* the victim. Given the term’s etymology, this is exactly what one would expect: the reference to a victim’s loss of *timê* and the corresponding need to redress the balance by extracting *timê* from the offender are intrinsic. This reference to the interests of the victim is, for Aristotle, precisely what distinguishes *timôria* from *kolasis*.³⁵ The orators are perfectly capable of making the same distinction, as when Demosthenes draws an implicit distinction between *kolasis* as the legal imposition of suffering on a convicted defender and the satisfaction of the prosecutor, allowed (as we saw above) merely to witness state-imposed punishment.³⁶ Since *timôria* is defined fundamentally by its reference to the interests of the victim, it is unlike our word ‘punishment’. But this does not mean that it is automatically to be regarded as vengeance: the same reference to the interests of the victim is apparent in English terms such as ‘redress’ and ‘justice’.³⁷ We see this especially, and on a daily basis, in campaigns to secure ‘justice for so and so’; a Google search for the phrase ‘justice for Trayvon Martin’ yielded 32,400,000 hits on Sunday 26 January 2014. It is important to emphasize that this is not just a matter of slotting in an English term – vengeance, punishment, redress, or justice – and seeing whether it fits the context as a translation of *timôria* (though this procedure is a frequent tactic in the revenge *versus* punishment controversy). It is rather that the reflexivity of *timôria* as a concept marks it out as significantly different from ‘punishment’ but, at least in some respects, analogous to ‘justice’, in the sense of the just redress that victims or their partisans seek for the wrong that they have suffered. The fact that (for example) the family of a murder victim in the contemporary United States can demand ‘justice for Trayvon’ indicates the interest that victims, their families, and their supporters are felt to have in the legitimate punishment of the offender. Such demands tend to be voiced in the context of campaigns driven fundamentally by family and other supporters; the hitherto impartial may join such campaigns, but when they do, they are no longer impartial, but emotionally involved to a considerable extent. The ‘justice’ that is the focus of such campaigns is not abstract and impartial, but something that is sought as a way of satisfying both the rights and interests of the deceased and the emotional needs of that person’s family

³² Ant. 1. 27 (offender *receives timôria*); 5. 93 (*timôria* for offences, genitive); Lys. 12. 70 (*timôria* extracted *from* the offender).

³³ *For* the victim (dative of interest): Ant. 1. 3, 24; 5. 79, 88; *on behalf of* the victim, *hyper* + genitive: Ant. 5. 95; 6. 6; Lys. 1. 47; 12. 94, 100; 13. 1, 41, 42, 74–5.

³⁴ Ant. 1. 5 (using the possessive genitive); cf. 1. 21 (*timôria* given *to* the victim).

³⁵ See *Rhetoric* 1369b12–14: ‘there is a difference between *timôria* and *kolasis*; the latter is inflicted in the interest of the sufferer, the former in the interest of him who inflicts it, that he may obtain satisfaction (ἵνα πληρωθῇ)’.

³⁶ D. 23. 69: though the victim may witness the imposition of the penalty, ‘only the laws and the appointed officers have power over the man for punishment (*kolasai*)’.

³⁷ Todd (2007: 90) chooses ‘redress’ as a translation precisely because of the inadequacy of both ‘punishment’ and ‘revenge’, but does not go into detail.

and supporters. My point is not that ‘justice’ and *timôria* are interchangeable lexical tokens, but that the victim’s demand for justice in contemporary English answers to something that may also play a role in the pursuit of *timôria* for the victim in classical Athens. The reflexive nature of the term does not in itself impose an interpretation in terms of what we call revenge.

It is true, however, that *timôria* in legal contexts, including homicide, is not qualitatively different from *timôria* in purely interpersonal contexts. Both the victim of an insulting joke and the victim of homicide can be said to want *timôria*. (Again, we have terms with a similar range: in the former case, offence is taken; in the latter, the offence that is committed is a breach of the law.) The basic scenario would be the same whether the *timôria* sought or extracted was pursued through the courts or through revenge killing: *timôria* is something that the deceased is felt fervently to want and that is laid upon his/her relatives as a duty: the scenarios envisaged in our sources, where the victims, before they die, lay this duty upon their families,³⁸ would sit just as well in contexts of extra-legal redress as they do in contexts of legal redress.

A good illustration of the continuity between legal and extra-legal uses of *timôria* is given by a passage in Demosthenes 47. A man called Theophemus, together with his relatives Euergus and Mnesibulus, who are the speaker’s opponents in the present case, allegedly burst into the speaker’s house and, in the attempt to seize his property, caused the death of an elderly woman, the speaker’s former nurse, an ex-slave freed by the speaker’s father. The speaker tells how he sought the advice of the *exêgetai* (a body of religious experts) on what to do; they advise him not to prosecute Theophemus for homicide, since the dead woman was neither his relative nor his slave, but simply to purify his household and ‘obtain *timôria* in some other way, if you wish’.³⁹ The speaker’s household has been violated; and he is clearly engaged in an ongoing dispute with Theophemus and his family; but the specific question was about prosecution for homicide; such a prosecution would have been a form of *timôria* for an unlawful killing, but *timôria* for the old nurse’s death can also be achieved in other ways, a phrase that is perhaps vague enough to encompass forms of *timôria* that do not depend on any form of legal process at all. Though *timôria* for homicide is normally pursued only *via* homicide trials, such trials satisfy a need that remains to be satisfied when a homicide trial is impossible, a need that could in theory be satisfied by other means.

At the same time, the usage of *timôria*-words themselves also shows us that there is more to *timôria* in homicide cases than the simple pursuit of personal vengeance through the courts. This is because this usage also indicates very clearly the ways in which the process of satisfying the victim’s claim to redress is also one that directly affects the community and its laws. First, there are various ways in which speakers

³⁸ See e.g. Ant. 1. 29 (‘if they are able and have time before they die, they summon their friends and relatives, call them to witness, tell them who the murderers are, and charge them to *timôrêsai* for the wrong’, ἐπισκλήπτουσι τιμωρῆσαι σφίσιν αὐτοῖς ἡδικημένοις); Lys. 13. 41-2 (‘Dionysodorus ... referred to this man Agoratus as responsible for his death, and charged me and Dionysius, his brother here, and all his friends to *timôrein* Agoratus on his behalf; and he charged his wife, believing her to be with child by him, that if she should bear a son she should tell the child that Agoratus had taken his father’s life, and should bid him *timôrein* Agoratus on his behalf as his killer’). Note that what the victim in Ant. 1. 29 is explicitly said to want is *timôria* for the *injustice* he has suffered.

³⁹ D. 47. 70: ἄλλη δὲ εἴ πη βούλει, τιμωροῦ.

implicate the community, as represented by the dikasts, in the *timôria* sought by victims and prosecutors. In Lysias 1. 47, for example, Euphiletus (the defendant who argues that his killing of Eratosthenes was lawful) argues that his *timôria* serves not only his own private interest, but also the interests of the whole city, on the grounds that other citizens are less likely to become victims of *moicheia* (the seduction of one's wife) if the present jury endorses the measures that Euphiletus has taken.⁴⁰ Several passages in Lysias 13 present the victims of homicide as *philoï* and benefactors of the *polis* who are thus reciprocally entitled to the dikasts' support in obtaining the redress they deserve.⁴¹ Other passages simply observe that the victim's right to redress is guaranteed by law.⁴² More fundamentally, however, the community or its laws can themselves be presented as 'victims' with an interest in securing *timôria* from a perpetrator for an offence against the city itself. As we noted above, this is more common in the prosecution speeches delivered in the context of the 'public' procedures of *euthynai* and *apagôgê* (Lysias 12 and 13), but it also occurs in Antiphon 1, for the prosecution in a *dikê phonou*.⁴³

There is in fact no real gulf between the pursuit of *timôria* for the victim and pursuit of *timôria* for the city or its laws. Both prosecutors and defendants frequently spell out that *timôria* rectifies injustice.⁴⁴ This is a regular feature of the usage of the term in Greek.⁴⁵ *Adikia* and *adikein*, of course, can be used of purely interpersonal wrongs in Greek,⁴⁶ which reminds us that notions of right and wrong, justice and injustice, justified or unjustified retribution are implicated in everyday social interaction as well as in law and litigation. Even purely personal, extra-legal *timôria* can rest on the idea that people have a right to respect and a right to redress when that right is violated. Yet, be that as it may, the *timôria* that is pursued *via* the courts is not a matter of purely interpersonal relations. To seek *timôria* through the courts implies that the accused has broken at least one of the city's laws. Such *timôria* must be presented as something that is sought from the offender, rather than from third parties who may be

⁴⁰ Cf. his opening gambit in presenting his killing of Eratosthenes as the imposition of a lawful penalty (*zêmia*) in 1. 1: 'I should set great store, gentlemen, on your judging this matter in the same way as you would if it had happened to you. For I know that, if you had the same opinion about others as about yourselves, every one of you would be angry [*aganaktein*] at what has been done; indeed, you would all consider the penalties for those who do such things to be too lenient.'

⁴¹ Lys. 13. 1-2, 92-4, 97.

⁴² See Ant. 1. 21 (legal process enables the *timôria* to which the victim is entitled, *axios*, on account of the *adikia* he has suffered; dikasts as well as prosecutors are agents of *timôria*); Lys. 1. 2, 5, 31 (victim's rights guaranteed by law).

⁴³ See Ant. 1. 3 (*timôria* for both the laws and the victim: τιμωρήσαι πρόωτον μὲν τοῖς νόμοις τοῖς ὑμετέροισι ... δεύτερον δ' ἐκείνῳ τῷ τεθνηκότι), 24 ('I am prosecuting to ensure that she pays for her crime and to obtain *timôria* for our father and your laws (τιμωρήσω τῷ τε πατρὶ τῷ ἡμετέρῳ καὶ τοῖς νόμοις τοῖς ὑμετέροισι); in this you should support me one and all, if what I say is true'); Lys. 12. 94 (the dikasts as *dêmos* in its judicial capacity are urged to seek *timôria* on their own behalf); 13. 48 (remember what the Thirty did to you as individuals and to the city in general, and extract *timôria*), 51 (the rejected notion that the Thirty, in putting their victims to death, were pursuing *timôria* on behalf of the *polis*), 76 (*timôria* against Agoratus for his offences against the city), 78 (*timôria* for those who wronged the *dêmos*), 95 (remember what the Thirty did to you as individuals and to the *polis* and impose *timôria*).

⁴⁴ For *timôria* for *adikia* against the *polis*, see Lys. 13. 2 -3, 78, 82-4; for *adikia* against the victim: Ant. 1. 21, 27, 29; 5. 79-80, 88; 6. 6-7; Lys 1. 2, 39.

⁴⁵ See e.g. Hdt. 2. 120. 5: The Trojan war shows 'how great acts of injustice attract great *timôriai* from the gods' (ὥς τῶν μεγάλων ἀδικημάτων μεγάλα εἰσὶ καὶ αἱ τιμωρίαι παρὰ τῶν θεῶν).

⁴⁶ See e.g. Hipponax 115. 15 W; Sappho 1. 19-20 L-P; Theognis 1283. Cf. Pearson (1962) 17 and *passim*.

associated with the offender. In this way, the legal context gives *timôria* a particular legal shape. Passages in which *timôria* is sought for the city and its laws because the offender has wronged the state bring out what is implicit in any case where a citizen seeks redress, through the courts, for the *unjust* and *illegal* violation of his right to honour; the city, *via* its laws, guarantees the rights, that is, the *timê*, of individual citizens; to violate those rights is to dishonour both the individual and the state which guarantees the individual's claim to honour.

At the same time, we need to note that at all these levels, *timôria* retains its fundamental association with anger – with the anger that one feels when one's own *timê* is attacked, when one's family's *timê* is attacked, when one witnesses as a bystander an illegitimate attack on the *timê* of others, or when one feels, as a member of the community, that the *timê* of one's community is under attack. The relevant reactive attitudes remain emotional at all levels from personal affront to violation of the laws that bind all equally and without partiality.⁴⁷

Athenian legal discourse is built up out of ordinary social, ethical, and emotional language; that language is not transformed by its use in legal contexts, but still its use in such contexts gives it a distinctively legal shape.⁴⁸ The honour that is enjoyed by all Athenian citizens alike, by virtue of their membership of the community of citizens – the same honour that the state protects by giving individuals the right to seek *timôria* through the courts – is not something entirely different from the honour that is at stake in purely personal interactions; but it is not *merely* that either. It is also something in which the state as such has a legitimate interest, both as guarantor of citizens' honour and as a bearer of honour in its own right. The use of *timôria* in homicide speeches reflects the importance of *timê* in the concept of citizen rights, rights that the state guarantees by granting the right of redress through the system of justice under the rule of law. *Timôria* resembles our concept of punishment in some ways, but diverges from it in many interesting ways. But the fact that it is not quite co-extensive with our notion of punishment does not mean that it is merely a concept of revenge; *tertium* indeed *datur*. We need to understand Athenian concepts, in their own terms, in their original Athenian contexts. The usage of *timôria* in homicide speeches points to a specifically Athenian way of seeing things, in which a citizen's 'value' encompasses not only interpersonal forms of dignity and respect, but also his legal status as a member of a group of citizens, each of whom enjoys the same *timê* and whose claim to *timê* is guaranteed by law and by the sanctions that his fellow citizens are willing to impose – or to let him impose – if his *timê* is violated. To claim that if *timôria* is not punishment, it must be revenge, is simply the fallacy of false alternatives. The antithesis between vengeance and punishment is another of the many modern dualisms that proves unhelpful in trying to understand Athenian values in their own terms.

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⁴⁷ On the relation and interaction between those 'reactive attitudes' which express our ethical attitudes towards others (e.g. indignation, sympathy) and those which express and assert our concern for ourselves (e.g. anger, grief), see Strawson (1962). On the role of anger in Athenian litigation, see Allen (2000); Rubinstein (2004).

⁴⁸ Cf. Johnstone (1999), esp. 126-7.

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